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CURRENT TOPICS

Royal Assents

AMONG forty-four Bills to receive HER MAJESTY'S approval on 30th July were the Housing Repairs and Rents Act, the Landlord and Tenant Act, and the Finance Act. A full list of the Bills approved is printed on p. 542, *post*. Of these Acts, the Housing Repairs and Rents Act is probably the most immediately important to solicitors. It comes into operation one month after passing. Under it the Housing Repairs (Increase of Rent) Regulations, 1954 (S.I. 1954 No. 1036), have already been published and come into operation on 30th August next. On the same date the Rent Restrictions Regulations, 1954 (S.I. 1954 No. 1035), also come into force and the 1940 regulations are then revoked. New forms and a new notice are prescribed for insertion in rent books in respect of dwelling-houses to which the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, apply. Two small booklets have been issued by the Ministry of Housing and Local Government—"The New Act—Repairs and Rents, being Questions and Answers for Landlord and Tenant," and "Grants for Improvements and Conversions." Both are published by H.M. Stationery Office, price 6d. each, post free.

Bias

THERE can be few judicial phrases that have achieved quotation more frequently than those words of Lord Hewart in *R.* v. *Sussex Justices; ex parte McCarthy* [1924] 1 K.B. 256, in which his lordship recalled how fundamentally important it was that "justice should not only be done, but should manifestly and undoubtedly be seen to be done." Courts before and since that pronouncement have been zealous to see that legal proceedings are so conducted that no bias on the part of those who adjudicate should enter into the determination of the issues at stake, and that the parties and the whole world should have no reasonable cause to believe otherwise. The integrity of the principle was endorsed and fully maintained by the Divisional Court in the recent case of *R.* v. *Camborne Justices* (*The Times*, 30th July), but the court nevertheless refused an order of certiorari to quash convictions which followed on an information laid by a county council official after a prosecution conducted by a solicitor employed whole-time by the council, the bench having been advised on a point of law by their clerk, who was a member of the council. While the clerk was with the justices they did not discuss the facts of the case, and having advised on the point of law he returned to court. Mr. Justice SLADE said that to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest, not being pecuniary or proprietary, in the subject-matter of the proceeding, a real likelihood of bias must be made to appear not only from the materials in fact ascertained by the complaining party, but from such further facts as he might readily have ascertained. His lordship added, with regard to Lord Hewart's well-known judgment, that the continued citation of its principle in cases to which it was not applicable might lead to the erroneous impression that it was more important that justice should appear to be done than that it should in fact be done.

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The New Summons for Directions

THE series of amendments to the Rules of the Supreme Court which are due to come into operation with the beginning of the next legal term on 1st October represent possibly the most important reform of procedure for twenty years. Readers will remember that the principal concern of the amendments is with the summons for directions, and some may cast their minds back to the new procedure actions of the early thirties for an innovation of parallel importance and not dissimilar aim. But the new rules will apply to all proceedings where the place and mode of trial has not been determined before the commencement date, and will not be confined to certain types of action as was the now long obsolete new procedure. The return of the new summonses is to be fixed so as to allow an interval of twenty-one days after issue, and it has accordingly been directed (see the notice issued by the Senior Master, which we print at p. 544, *post*) that such summonses due for hearing after the Long Vacation may be issued, in a form newly prescribed, from 1st September onwards. The reform has necessitated a rearrangement of the Bear Garden Timetable, and from next term the Queen's Bench masters will hear their morning lists at 10.30 a.m., 11 a.m. and 11.30 a.m., summonses for directions being timed for 11.30 unless they are expected to occupy a long time, when a special appointment should be asked for. We hope to publish shortly a practical article on procedure under the new rules.

Alteration of Development Plans

THE Town and Country Planning (Development Plans) (Amendment) Regulations, 1954, came into operation on 16th July, 1954. The regulations of 1948, which they amend, deal with the form and content of development plans and the procedure for bringing them into operation. The amendments effect minor changes in the procedure for altering an approved development plan pursuant to proposals submitted under s. 6 of the 1947 Act, the object being to simplify the submission of proposals for alterations and additions to operative development plans. In circular 48/54, dated 15th July, 1954, the Minister states that reg. 5 meets the need of some authorities to define their intentions as to critical central areas of towns in more detail than an ordinary town map permits, in a supplementary town map drawn to a scale of 1/2,500. The Minister's approval is required before a supplementary town map can be included in the development plan. The circular states that minor divergencies from the approved plan in the control of development will not necessarily need a formal amendment. The Minister has issued a General Direction (H.L.G.4441) which gives local planning authorities a considerable discretion in this matter.

Report of the Central Land Board

THE Central Land Board's Report for 1953–54 (H.M. Stationery Office, price 6d.) announces that the Board have begun the work of identifying claims under the 1947 Acts which are likely to rank for payments under Pt. I of the Town and Country Planning Bill, 1954, and the equivalent Scottish Bill when they become law, and in particular those relating to land in respect of which a development charge has been paid and those relating to land which has been acquired by public authorities at existing use value. Under the heading "Claims for depreciation of land values under section 58," the report states that during the year the Board issued 12,097 determinations of development value, bringing the total number issued to 799,983, of which 799,268 had become final by the end of the year. In England and Wales 194 notices of appeal were lodged against the Board's determination of development value, compared with 1,007 in the previous year. Up to 31st March, 1954, the Board had received 9,106 notices of assignments under s. 2 (2) and (3) of the 1953 Act, and had disposed of 8,916 of them. The number of new claims registered under s. 59 was 106, the total by the end of the year being 35,922. A total of £4,617,727 has been paid out under s. 59, of which £1,225,586 was paid out during 1952–53 in respect of 2,070 claims. Contributions to claimants who had incurred fees in the employment of professional advisers in connection with claims under ss. 58 and 59 amounted to £170,608, bringing the total paid to £3,956,586. During the year the total amount of development charges received in cash or set off against claims was £2,285,940, of which £1,547,738 was collected in cash. Regional analyses of the figures in the report are contained in appendices.

Wireless "Eavesdropping"

THE first prosecution under s. 5 (*b*) (i) of the Wireless Telegraphy Act, 1949, which prohibits listening in to wireless messages without authority, was heard by Mr. GEOFFREY ROSE at Lambeth Magistrates' Court on 30th July. The defendants pleaded guilty and were fined £7 and £4 respectively. The section was brought into force in April of this year. "Eavesdropping on the air is now an offence," said counsel for the prosecution, "just as in the Middle Ages it was a common-law offence to do it in the more accepted sense of the word." In the case before the Lambeth court the accused had carried on an elaborate system of listening in to high frequency wavelengths used by the police and the fire services, and passing information to news agencies and fire assessors. The defendants had made a statement to the police authorities in which they stated that they had no idea that they were contravening the law. The object of the prosecution, counsel stated, was to give the new law wide publicity, so that everyone would know that it is now an offence to use wireless apparatus or receiving sets with intent to listen in to messages and obtain information, unless authorised to do so.

The Law Quarterly Review

THE outstanding feature of an even more than usually attractive issue of the *Law Quarterly Review* is a full report of a lecture by Sir RAYMOND EVERSHED, the Master of the Rolls, delivered to students of King's College, University of London, entitled: "Reflections on the Fusion of Law and Equity after Seventy-five Years." The truth of the matter, Sir Raymond said, is that the "fusion" of law and equity is a procedural matter, and that, since the shift in emphasis from proprietary rights to personal rights, under statute as well as under contract, the equitable remedies have a highly important part to play. Illustrating his theme, he quoted from Lord Simon's speech in the *Winter Garden Theatre* case [1948] A.C. 173, and from Lord Uthwatt's speech in the same case, on the availability of an injunction as a remedy for the preservation of the sanctity of a bargain, available both to a licensee who has refused to accept an unauthorised revocation of his licence and to a licensee who has not received any notice of revocation. The Master of the Rolls suggested that if the equitable remedy created a right, it was going too far to say that that right was of a proprietary kind, and said that he did not himself see why it should do more than prevent unconscionable conduct. Among other interesting articles in this issue of the *Quarterly* is one by His Honour Sir GERALD HURST, Q.C., on Sir Matthew Hale.

THE EFFECT OF A DEVELOPMENT PLAN

WHAT legal effect has the coming into operation of a development plan under the Town and Country Planning Act, 1947? The answer seems to be very little. Some light has now been cast on the subject by the Town and County Planning (Development Plans) Direction, 1954, and the explanatory Circular No. 45/54 recently issued by the Ministry of Housing and Local Government and briefly noted in Current Topics at p. 462, *ante*.

The forms in which this question will be put to the reader by his clients will be less all-embracing but very practical; for example, can I develop my land for industry when the plan shows it in a residential area? Can I build houses if the plan does not zone my land for any particular purpose? When I bought my house the surrounding land was in a green belt area in the plan; I now hear it is to be built on; have I any redress?

Before dealing with the more important principles involved, it is, perhaps, as well to mention two cases of limited application in which a development plan does have some direct effect. First, where land is designated in a plan as subject to compulsory acquisition, the provisions of Pt. IV of the 1947 Act are brought into play, whereby the appropriate acquiring authority may be authorised to acquire the land by a compulsory purchase order and the Minister, in deciding whether or not to confirm or make the order, is by s. 45 entitled to disregard any objection to the order which amounts in substance to an objection to the use of the land shown in the plan. Secondly, the definition or designation of land in a street authorisation map will have some legal effect under ss. 47 and 48 of the 1947 Act. The cases concerned are so few as not to justify further discussion of the precise effect here but it will be found set out at p. 17 of "Development Plans", No. 26 in the "Oyez Practice Notes".

Subject to the foregoing, the 1947 Act gives a plan little, if any, direct legal effect. By itself a plan neither permits nor prohibits anything. The system of development control under Pt. III of the 1947 Act continues in force with unabated vigour. But ss. 14, 21, 23 and 26, empowering local planning authorities to determine applications for planning permission, to revoke or modify planning permissions, to serve enforcement notices and to secure the removal or alteration or discontinuance of authorised development, each require the authority, in exercising the power conferred, to have regard to the provisions of the development plan and to any other material considerations. Beyond this limited requirement, there is no specific provision in the Act obliging the authority to observe or carry out the provisions of the plan. Therefore, it would appear that an authority, having had regard accordingly, could, for example, decide a planning application as they wished whether or not their decision was in accord with the plan. For example, they might allow houses to be built on land reserved for allotments. Such a decision might well be reasonable and proper because, for example, since the approval of the plan allotments might have been provided elsewhere or the demand for them might have declined.

Why, then, should the new Direction which authorises the authority to permit development not in accord with their plan in certain cases and subject to certain limitations be necessary or indeed valid? It flows from s. 14 (3) of the Act, which says that "Provision may be made by a development order for regulating the manner in which applications for permission to develop land are to be dealt with by local planning authorities, and in particular—(*a*) for enabling the Minister . . . to give directions restricting the grant of permission by the local planning authority . . . (*b*) for authorising the local planning authority, in such cases and subject to such conditions as may be prescribed by the order, or by directions given by the Minister thereunder, to grant permission for development which does not accord with the provisions of the development plan."

Article 6 of the General Development Order, 1950 (S.I. 1950 No. 728), enables the Minister to give directions restricting the grant of permission, while art. 8 enables a local planning authority in such cases, and subject to such conditions as may be prescribed by directions given by the Minister, to permit development not in accord with the plan.

The new Direction is made under the authority of both articles. Paragraph 1, which follows from art. 8, authorises the authority to permit development not in accord with the plan "in any case where in their opinion the development authorised by the permission, if carried out in accordance with the conditions, if any, to be imposed, would neither involve a substantial departure from the provisions of the plan nor injuriously affect the amenity of adjoining land." Paragraph 2 requires the authority in any other case, before granting permission for development not in accord with the plan, to send a copy of the application with a statement of the reasons why they wish to grant it and of the conditions to be imposed, if any, to the Minister; it then, under the authority of art. 6, prohibits them from granting permission until twenty-one days after receipt of the copy application by the Minister. The Minister is thus given the opportunity of intervening if he wishes by directing the authority to refer the application to him for decision under s. 15 of the 1947 Act. If the Minister does not intervene in this period, the authority may grant the permission.

Thus, in this rather roundabout way, a legal brake is placed upon any serious departures from the development plan and some safeguard is given to neighbouring owners. It will be noted that, while a departure from the plan has to be substantial if para. 2 is to operate, there is no word such as "substantial" or "serious" to qualify the injurious affection to adjoining land which will make para. 2 operate. It is, however, hardly to be expected that the Minister will concern himself very much with minor developments which may nevertheless affect the amenities of adjoining land.

In order to gain a true appreciation of the effect of the new direction it is necessary to know, first, what is meant by the words "does not accord with the provisions of the development plan" and, secondly, what is "a substantial departure from the provisions of the plan." On both these points guidance will be found in the Ministry's circular.

On the first point, as readers will know, the development plans of the 1947 Act for the most part form only a general guide to future development and do not lay down hard and fast rules as to what will be permitted here and what there (see articles at 95 SOL. J. 424, 439 and 458, and "Oyez Practice Notes" No. 26).

Thus, in rural areas, plans will, over most of the country, show no specific proposals; the areas will simply be left white on the plan and probably the written statement will say that these areas are by and large expected to remain much as at present. In green belt areas, round large centres of population, the plan will contain no absolute prohibition of development but simply express an intention that the area should remain open in character. In town areas most of the use zones will be primary use zones; in other words the plan

indicates the primary use of an area, e.g., residential, but does not necessarily exclude other uses, e.g., shops or offices, in that area.

In the light of this imprecise character of a plan it is impossible to lay down any hard and fast rule as to what development would or would not accord with the plan. The general tenor of the Ministry's advice is that each case should be decided on its own facts by a common sense interpretation of the spirit of the plan.

Applying this principle, it would be reasonable to assume that a proposal to erect one house in a green belt area near a large town would not be out of accord with the plan, though a proposal to erect forty houses would be. A proposal to erect even forty houses in a " white " area on the outskirts of a small country town would not, however, be out of accord. A proposal to erect a large factory in a primarily residential area would be out of accord even if the area were a large one ; a proposal to erect a small inoffensive factory might be in accord in a large primarily residential area, but out of accord in a small one.

In the rarer type of case where a plan allocates land for a specific use, e.g., an open space or school site, any development for another purpose would be out of accord except where of a temporary character, e.g., a caravan site, which would come to an end before the land is required for the purpose shown on the plan. Further, if the land is allocated for the functions of a particular Minister, local authority or statutory undertaker, development of the same kind by any other developer would be out of accord.

Also, it must not be forgotten that a development plan besides being a guide to the type of development intended is also a guide to the time at which that development should take place, though it must be said that the " programming " of a plan will usually be expressed in rather vague and guarded terms. So a proposal to develop now a residential area in a plan may be out of accord with the plan if the development is programmed for a period five to twenty years ahead.

A decision as to whether a proposal is a substantial departure from the plan or interferes with the amenity of adjoining land is to be made in the same way in the light of common sense and the spirit of the plan. The following sentences from the circular are of particular interest :—

> " Development plans are of importance to a very wide range of interests and in the public mind an authority's planning administration is likely to be judged on the degree of significance which is attached to the approved plan. It would, therefore, seem to the Minister to be a cardinal mistake if in availing themselves of the Direction authorities showed any tendency to minimise the importance of the plan in favour of short-term considerations and to grant permission freely on the basis of a narrow interpretation of ' substantial departure ' or of ' the amenity of adjoining land.' In particular, it must be recognised that people who accepted the provisions of the plan as submitted would often regard as a substantial departure any permission which prejudiced their position under the plan as a whole—for example, if it were proposed to grant permission to develop for housing land which the plan allocated for allotments."

The inference to be drawn from this is that the Minister will be loth to sanction any substantial departure from a plan. It is reasonable that this should be so, for it would be wrong to sanction through the medium of a planning permission, without affording any opportunity for neighbours and other interested persons to object, what, in effect, is an amendment of the plan to secure which the statutory procedure for amendment with all its attendant publicity and opportunity for objection should be carried out. It is to be expected that the Minister, if he decides to intervene on an application referred to him under the Direction by calling it in for decision by himself under s. 15 of the 1947 Act, will direct a public local inquiry to be held before granting an application involving a substantial departure.

Clearly the Minister intends to keep an eye on the way in which authorities interpret " substantial departure " or " injuriously affects the amenity of adjoining land ", for art. 4 of the Direction requires an authority to send him, for information, a copy of every permission which does not accord with the plan, whether or not it falls within these terms.

What is the legal effect of a permission granted by an authority who have not complied with the Direction ? It would appear that it is invalid, and consequently the development, if carried out, will be unauthorised and liable to enforcement proceedings under ss. 23 and 24 of the 1947 Act. However, as the authority have granted permission, it is perhaps unlikely that they will think it expedient to serve an enforcement notice. What, then, is the remedy of an adjoining owner whose land is injuriously affected by the development ? If he cannot persuade the authority to take enforcement proceedings, his only remedy would seem to be to try to persuade the Minister to take enforcement proceedings himself or to direct the authority to do so under s. 100 of the 1947 Act. It is unlikely, however, that the Minister would intervene in this way in any but the most serious cases, though, no doubt, he would take steps to ensure that the authority did not offend again.

Where the function of determining planning applications has been delegated by a county council to a county district council, para. 3 of the Direction makes it a condition of the grant by the county district council of any permission under the terms of the Direction that the district council shall have obtained the consent in writing of the county council. If in any case the requisite consent has not been obtained, it may be possible for a neighbouring owner to persuade the county council to take some action to stop the development.

The new Direction only applies when the development plan concerned has been approved by the Minister, but para. 7 of the circular states that during the period between submission of a plan to the Minister and its coming into operation he would wish local planning authorities to deal with applications broadly in the same manner as if the Direction applied.

R. N. D. H.

The Queen has been pleased to approve the appointment of Mr. ARCHIE PELLOW MARSHALL, Q.C., to be Deputy Chairman of the Court of Quarter Sessions for the County of Cornwall with effect from 30th July, 1954.

The Board of Trade announce that Mr. ROYSTON BERNARD HOWARD has been appointed Assistant Official Receiver for the Bankruptcy District of the County Courts of Sheffield, Barnsley and Chesterfield with effect from 30th August, 1954.

Alderman ABRAHAM REGINALD FLINT, solicitor, of Derby, is to be made an Honorary Freeman of the Borough of Derby at a ceremony on 21st October.

Mr. RICHARD EDWARD MILLARD, Deputy Clerk of Bucks County Council for the last nine years, has been appointed Clerk to succeed Col. Guy Robert Crouch when he retires next year. Colonel Crouch has been Clerk of the Peace and Clerk of the Council for the last thirty years.

A Conveyancer's Diary

WIFE'S COSTS IN DISPUTES OVER MATRIMONIAL PROPERTY

UNLESS it is reversed on appeal or dealt with by legislation, the decision in *J. N. Nabarro & Sons* v. *Kennedy* [1954] 3 W.L.R. 296, and p. 524, *ante*, will have to be carefully watched for the effect which it may have on the issue of proceedings under s. 17 of the Married Women's Property Act, 1882. Under that section the court is given power to make such order with respect to the property the title to or possession of which is in dispute, and to the costs of and consequent on the application, as it thinks fit. This is a jurisdiction of extraordinary width, having all the advantages and disadvantages of any form of summary procedure, but I believe it to have been the generally accepted view that, whatever its defects, they were more than balanced by the opportunity it afforded of putting an end to disputes of a particularly bitter kind at one blow. Appeals, even successful appeals, from orders made under this section are not unknown; a number have been reported in the last three or four years; but in the vast majority of cases the rule has been "one application, one order," and the rights of the parties have been finally determined. The orders made under this jurisdiction have, of course, included, either tacitly or expressly, directions for the payment of the costs, and it has also been the view of practitioners that the order as to costs under s. 17 was final and, subject only to the rarely exercised right of appeal, decisive.

Now it appears that an order as to costs made upon a s. 17 application can lead to further litigation, and, moreover, that the balance of the order made on a s. 17 application, which normally takes into account the parties' liability in relation to costs, can be upset in subsequent proceedings in another court. This is the result of the present decision. The facts as reported are confusing because they include much irrelevant matter; those material to the substance of the decision can be very shortly stated. A husband made an application under s. 17 with respect to the title to certain moneys and the lease of a flat which had been the matrimonial home until the husband left it, and in which the wife was still residing at the time of the application. A final order was made on this application, the general result of which was that the husband established his right to practically all the moneys in dispute and to the lease of the flat, but the wife (as the report states) succeeded in maintaining her position in the flat until the husband had found her suitable alternative accommodation, and also in keeping some of the furniture. This was a substantial victory for the husband, and it was reflected in the order made as to costs, which were that the wife should pay one-fifth of the husband's taxed costs.

The plaintiffs in the present action were the solicitors who acted for the wife in the proceedings under s. 17, and in this action they claimed from the husband a sum of money which represented (as I read the report) their professional charges for work done and moneys expended on the wife's behalf in connection with those proceedings. The wife, it may be added, had by the time this action was commenced divorced the husband and married again, and was living overseas.

No note of the arguments in this case is available yet, but it would seem that the way the claim was supported on the plaintiffs' behalf was that in incurring those charges the wife had acted as the husband's agent, under the principle which permits a wife to pledge her husband's credit in order to obtain the necessaries of life. This submission was, apparently, accepted by Stable, J., who tried this action.

This subject has a history, which is not, however, a continuous history; the different courts which for so long applied different systems of law in resolving the various kinds of disputes which can arise out of the matrimonial relationship doubtless made any wholly logical development of any part of this branch of the law impossible. There was, first of all, the common-law principle which recognised that a wife, who by that law was deprived of every right of property in possession, might at times find herself without the necessaries of life, and allowed her to obtain those as her husband's agent. It was not until recent times that the costs of the wife in proceedings between herself and her husband were regarded as necessaries for the purposes of this principle. Then there was the rule which existed in the old Ecclesiastical Courts, whereby a wife who defended a charge of adultery made by her husband, even if her defence was unsuccessful, could in effect obtain the costs of defending her suit from the husband who, while the marriage still subsisted, enjoyed all the present rights of property which the wife had brought with her into the marriage. If it had not been for this rule that a wife might obtain from her husband the costs of a suit in which she defended her status as a wife, a husband might in practice have been able to obtain a divorce at his volition. And, finally, these two principles appear to have been joined in some sort of a union in *Michael Abrahams, Sons & Co.* v. *Buckley* [1924] 1 K.B. 903, where McCardie, J., held that a wife might, in certain circumstances, as agent for her husband, render her husband liable at common law to pay the costs incurred by her of matrimonial proceedings. In that case the matrimonial proceedings were not brought to any conclusion, so that the Divorce Court, as successor to the old Ecclesiastical Courts, had no opportunity to exercise its undoubted jurisdiction to make an order for payment of the wife's costs of those proceedings by the husband; the common-law court was asked to step into this gap, and it was held that it could do so.

Neither the old common-law principle nor the old rule of the Ecclesiastical Court, nor the product of the two, which was the outcome of *Buckley's* case, covered the point which was before Stable, J., in the present case. The problem he had to deal with is put very succinctly in his judgment, when he referred to the argument of the husband that "the jurisdiction under [s. 17], particularly having regard to the situation which prevailed at the time when that Act was passed, creates a very peculiar individual compartment in the law wherein any right to costs depends entirely on the award that is made by the judge who decides any particular matter." The learned judge then went on to say: "That argument, on the basis of what is convenient, seems to have a good deal of force behind it. It does seem to have been a remarkable thing that, having regard to present-day conditions (very often a woman is in a much better financial position than her husband), if there is a dispute about property between husband and wife, and the wife puts forward a claim which she cannot and does not sustain successfully, provided that she is impecunious and has no means of her own, she can employ a solicitor and pledge her husband's credit to pay his bill, with the result that, at the conclusion of litigation from which *ex hypothesi* the husband emerges wholly victorious, he has the privilege of paying his own legal expenses as well as his wife's, which may amount to a sum considerably in excess of the property in dispute; and I confess that, if I thought that the contention advanced by the husband were consistent with the law as

the authorities state it to be, the result would be by no means undesirable. It does seem to me, as a matter of pure convenience, that when married couples meet on this particular battlefield, rather different rules should apply from those applicable to other branches of inter-domestic strife . . ."

It was the state of the authorities, therefore, which Stable, J., felt made it impossible to follow the dictates of convenience and his own obvious inclination to regard s. 17 proceedings as self-contained and final. That much is quite clear. What is not clear is what those authorities were. If it was *Buckley's* case, then it seems to me that it would have been possible to distinguish that case on the ground that it was an extension of the old rule of the Ecclesiastical Courts in relation to the wife's costs of defending herself against a charge of a matrimonial offence, logical so far as it went, but having no application where the costs in question related to anything but a defence in proceedings based on a matrimonial offence and brought with the object of obtaining the remedy of divorce or something analogous thereto. But in fact, after stating the contention which had been put forward on behalf of the husband in the words which I have cited, the learned judge mentioned only one case, *Cale* v. *James* [1897] 1 Q.B. 418. That case was factually on all fours with the present case, except that the costs incurred by the wife had been incurred not in s. 17 proceedings, but in proceedings before the magistrates under the Summary Jurisdiction (Married Women) Act, 1895. That Act enabled the court to make provision for the parties' costs " as the court might think fit," that is to say, as a matter of construction of language, the court's power to make orders as to costs was essentially similar to that under s. 17. In *Cale* v. *James* a Divisional Court of the Queen's Bench Division held that an action by a solicitor who had acted for the wife in proceedings under that Act against the husband for the wife's costs did not lie, because the intention of the Legislature was that the question of costs should be dealt with summarily by the magistrates. Stable, J., came to the conclusion that he ought not to extend that case to the case of s. 17 proceedings, because the Act of 1895 had been intended to apply to persons in humble circumstances, whereas s. 17 applies to persons in any rank of society.

This decision was reached with reluctance, and it seems to me, with all respect, that the learned judge could have followed his own inclination if he had treated the question before him as one of construction of two sets of legislative provisions which are essentially alike. On that footing it would not have been a question of " extending " *Cale* v. *James* to a case under s. 17; it would simply have been a question of applying, in similar circumstances, the decision of a superior court. As for *Buckley's* case, if that had any influence on the decision in the present case (a question it is not entirely easy to answer), reliance on it was, I submit with respect, misplaced, since the circumstances in that case were so different from those in the present.

But, however that may be, the existing rule in relation to s. 17 proceedings must for the present, at any rate, be taken as that laid down in the case under review, whatever the inconvenience of it may be. As to that, there is nothing which need be added to the words of Stable, J. This decision will apply, presumably, to consent orders under s. 17, and in reaching any compromise which involves a consent order under this section the practitioner must now take into account the liability at law of the husband for his wife's costs, which the latter's solicitor may enforce after the s. 17 proceedings have come to what would otherwise appear to all concerned to have been their end. Some immediate cash provision for such costs is probably the only way in which such a liability can now be certainly prevented from arising.

" A B C "

Landlord and Tenant Notebook

CONTROL: PURCHASER v. VENDOR'S SUB-TENANT

It is well known that some tenants object to a change of landlord as much as landlords object to a change of tenant; the objection may be less reasonable, but it may be that some respect was intended to be shown for it when Parliament, deciding that a court should have power to grant an order for possession of controlled premises if, *inter alia*, the landlord reasonably required them for occupation as a residence for himself, etc., excluded " a landlord who has become landlord by purchasing the dwelling-house or any interest therein after " a specified date: 11th July, 1931, 6th December, 1937, 1st September, 1939, according to the statute applicable. Or it may be that, one object of the Acts being " to provide as many houses as possible at a moderate rent " (Scrutton, L.J., in *Skinner* v. *Geary* [1931] 2 K.B. 546), it was thought that superior purchasing power ought not to be so used as to reduce the number of such.

Be that as it may, the few words expressing the exclusion have given rise to an astonishing amount of interpretative authority. On the whole, the courts appear to have been conscious of the popular objection to having one's house " bought over one's head " (Scott, L.J., actually adopted the popular metaphor when giving judgment in *Epps* v. *Rothnie* [1945] K.B. 562 (C.A.)). " Purchaser " has been held, in Ireland, to apply to one who has entered into, but not completed, a contract (*Barrett* v. *Marshall* (1920), 54 Ir. L.T. 214), and there have been English county court decisions to the same effect. In *Baker* v. *Lewis* [1947] K.B. 186 (C.A.), Morton, L.J., said: " I am aware that the word ' purchase ' and the words ' by purchase ' have in certain contexts a technical meaning which is well-known to lawyers, but I am not aware of any case in which ' by purchasing the dwelling-house ' has been given any technical meaning." The contention that a devisee was purchaser for the purposes of security of tenure was rejected accordingly.

Some doubt whether, even so, the phrase adequately expresses the intention of the Legislature may have been felt when *Powell* v. *Cleland* [1948] 1 K.B. 262 (C.A.) came before the courts; in that case the plaintiff had taken a long (concurrent) lease from the defendant's landlord, and thus become his landlord—but not, it was held, by " purchasing the dwelling-house or any interest therein." The advocates of popular interpretation cannot have it both ways.

Much the same can be said about the latest decision on the effect of the phrase, that of *Cairns* v. *Piper* [1954] 3 W.L.R. 249 (C.A.); *ante*, p. 492; an interesting case, as Singleton, L.J., said, when commencing his judgment, and one for which there was no exact precedent.

Before the plaintiffs in this case came upon the scene, a house, of which they claimed part, had been divided into two dwelling-houses; that is to say, the whole building was let to one *R*, and *R* had sublet the upper part to the defendant; *R* himself occupied the ground floor as his residence. The

plaintiffs bought the premises, i.e., the whole building, in 1950; *R* was or became their statutory tenant, and in 1953 they brought an action against him for possession, relying on the availability of suitable alternative accommodation (Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1) (*b*)). The alternative accommodation alleged to be available was in fact none other than the first floor; and that such may be suitable has been recognised since the decision in *Thompson* v. *Rolls* [1926] 2 K.B. 426. The county court judge made the order on the usual condition, i.e., that the plaintiffs would grant *R* a tenancy of the ground floor. Presumably rent was determined by apportionment.

Having put *R* in his place, the plaintiffs proceeded to sue the present defendant for possession of the upper part on the ground that the dwelling-house was reasonably required by them as a residence for themselves. And the defendant found himself cornered. The plaintiffs were his landlords by the Increase of Rent, etc. (Restrictions) Act, 1920, of which s. 15 (3) runs: "Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued." Indeed, if this were not so deemed, the defendant's right to occupy what was claimed would have been destroyed when the mesne tenant's interest determined. The loophole which suggested itself was a contention that the plaintiffs had become his landlords by purchasing the dwelling-house, and this contention was accepted by the county court judge, who considered that it would be contrary to the spirit of the Acts and of s. 15 (3) to hold that the position of the sub-tenant could in any way be made worse by reason of the superior landlord obtaining possession by order of the court or otherwise.

But this reasoning was not approved by the Court of Appeal, where, among the numerous authorities cited, only *Fowle* v. *Bell* [1947] K.B. 242 was referred to in the judgments. In that case it was held that landlords (also a married couple) who had bought a tenanted house and, after the tenant had left, let it to the defendants, were not landlords who had become landlords by purchasing the dwelling-house. The court, indeed, applied *Epps* v. *Rothnie*, *supra*, which decided that the exclusion did not affect a landlord who had bought a vacant house and then let it. Mackinnon, L.J., said in that case: "If the construction for which counsel [the defendant's] contends is correct, it is inconceivable that the Legislature would have wasted ink and paper by inserting the words 'who has become landlord by purchasing the dwelling-house,' since it would have been sufficient to have said 'not being a landlord who has purchased a dwelling-house'." The implied compliment may seem a little unexpected when one recalls that it was the same learned lord justice who once complained that the horrors of these Acts were prematurely hastening many of H.M. judges to their graves (see 62 L.Q.R. 34).

How liberally these Acts should be interpreted has always been a difficult question, and one can say that in this case the county court judge went too far in construing the words "in a broad, practical, commonsense manner so as to effect the intention of the Legislature": the quotation is from a judgment of McCardie, J., in *Read* v. *Goater* [1921] 1 K.B. 611—but is prefaced by the words "it is essential, wherever possible . . ." Denning, L.J.'s "A judge must not alter the material of which it is woven, but he can and should iron out the creases" (*Seaford Court Estates, Ltd.* v. *Asher* [1949] 2 K.B. 481 (C.A.)) affords some guidance; but it may not always be easy to say whether the judicial iron or non-judicial scissors have been used.

Employing a different metaphor, it looks, at first sight, as if the plaintiffs in *Cairns* v. *Piper* had solved a difficult two-mover. But the problem calls for more than two moves; the county court judge had not decided whether they reasonably required the dwelling-house, whether greater hardship would be caused by granting the order than by refusing it, or whether it would be reasonable to make the order; and the case was remitted for further consideration accordingly.

R. B.

HERE AND THERE

THE IMPOSSIBLE RIDDLE

THE longer one lives the more one realises that, if people don't see a thing for themselves, it's no good trying to explain it to them, and that goes for politics, painting, music, poetry, architecture, good manners, and religion. As Ogden Nash puts it:

> "When people reject a truth or an untruth it is not because it is a truth or an untruth that they reject it;
> No, if it isn't in accord with their beliefs in the first place they simply say, 'Nothing doing,' and refuse to inspect it."

The controversialist must frame his sentences carefully according to the convictions, or the previous convictions, of his listeners, for only on that foundation can he build. You will never get anyone to admire George Barker's poetry who is not already predisposed to admire it. Luckily, the law doesn't often have to go into questions of artistic or literary merit, for when it does, it is usually then that it makes an ass of itself. Look at *Whistler* v. *Ruskin* for painting, and *Belt* v. *Lawes* for sculpture, to take two classic instances. But good taste in the social or moral sense is just as elusive as good taste in the artistic sense and, unfortunately for the law, there rests upon it a continuing duty to hunt down the obscene, a sort of Hunting of the Snark involving a never-ending attempt to define the indefinable, to clutch the inapprehensible and to rationalise the irrational, by answering, as best it can, an impossible riddle set in 1868, "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort might fall." This riddle, you will notice, deprives the law of the support of its favourite companion and constant guide, the ordinary reasonable man, and substitutes for him the dirty-minded and the immature as the characters whose viewpoint is to be the standard of measurement, because, although, I suppose, the ordinary reasonable man (who isn't a prig) would be the first to admit that his mind is open to immoral influences, the riddle surely must mean wide open and specially receptive. Anyhow, the answer to the riddle also depends on what you mean by "depravity," and that depends on a coherent code of morals, which is about the last thing the modern world is likely to agree on. The best it can do is a rather nebulous sense of decency, in the Latin sense of "seemly."

WHOSE STANDARDS?

OBVIOUSLY what is "seemly" depends on place, time and company. One sort of conversation goes at a public-house

smoking concert; another sort goes at a State banquet at Buckingham Palace, and so on, through the infinite variations and combinations of human society to which the ordinary reasonable man can be trusted to adjust himself. But what about the dirty-minded and the immature? Well, virtually anything may tend to deprave them, the immature from curiosity, the dirty-minded because they are depraved already, anyway, and quite a small shove will push them a little further down the slippery slope. If you get into the drearier, duller sort of bad company you'll find that almost any object—animal, vegetable or mineral—can be converted to the uses of a long dirty story. In obscenity cases, the question which the court must constantly ask themselves is, how far must the literature of reasonable, healthy men and women be limited to suit the moral requirements of schoolchildren and vicious degenerates? Mr. Justice Stable, in a recent case, clearly expressed the view that contemporary literature was not to be measured by what was suitable for a fourteen-year-old schoolgirl to read.

THERE'LL ALWAYS BE A SWINDON

THE much-mocked Dr. Thomas Bowdler, whose name has added a sarcastic epithet to the English language, had, you know, the right idea, when in his "Family Shakespeare," he set out "by careful omissions of all passages of an irreligious or immoral tendency" to ensure that the plays should no longer "raise a blush to the cheek of modest innocence nor plant a pang in the heart of the devout Christian." And quite right, too. His edition was meant for reading in the family circle, a special place, a special occasion, a special audience. There is nothing essentially absurd in being careful of the language you use in the presence of young children. So far so good. There was no question of exercising a general fig leaf censorship over all the editions of Shakespeare, let alone the Bible, which also came in for his attentions. It has been left to Hollywood in our own day to discover the financial possibilities of the "unBowdlered" Bible. As Sandy Wilson (of "The Boy Friend") put it in one of his revue songs:

"Brush up your Bible and the public will shout,
'Gee whizz';
Brush up your Bible; it's the sexiest script there is."

(And that isn't a satire on the Scriptures, but on their conversion to box-office uses.) It is interesting that, in this year which is the bicentenary of the birth of Dr. Bowdler (who, by the way, was a Georgian and not the Victorian that almost everyone imagines), a former Chief Mechanical Engineer of the G.W.R., the secretary of a local hospital management committee and a grocer at Swindon should have decided that "The Decameron" must be sent to the stake as obscene along with "Dames Fry Too," "The Foolish Virgin Says," "Ahaaaaa," in a batch of 261 books seized by the police. "Build Me a Blonde," "Miss Otis Says Yes," and "Frisco Doll" were among 87 others seized but not condemned to the devouring flames. In which category, one wonders, would the sapient magistrates have put Chaucer? He was, of course, an Englishman and so a presumption of basic decency might have been allowed in his favour. But obviously Italians like Boccaccio or Frenchmen like Rabelais and Brantôme were beyond the pale. Still, one can't rationalise the subject. The only guide is one's sense of what is sensible. One can only say that it is certain that Swindon will be Swindon still, even without Boccaccio.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Fusion

Sir,—Letters in your two last issues show that there must be a considerable body of opinion in the profession who feel that the present division is unsatisfactory and that some rearrangement or fusion between the two branches of the legal profession is necessary, both in the interest of the public and of the profession itself.

To-day, litigation affords a remuneration which is inadequate, but already it has been priced so high that it is quite outside the reach of the middle class litigant. The Evershed Committee has come and reported and gone, but can offer no solution to this problem. The difficulty is, that with the present system of country solicitors, London agents, junior counsel and senior counsel, litigation is now a luxury in which only the wealthiest or the State-aided poor can indulge. In each action too many men have to be employed for too many hours at too low a rate to make it worth their while, and yet an aggregate cost is produced which compels all lawyers to advise settlements regardless of real merit.

Is not the only hope of any improvement the one suggested by the minority of the Evershed Committee—that an inquiry should be made into the organisation and division of the profession?

Croydon. A. RAWLENCE.

Tenancies by Estoppel against Mortgagors

Sir,—With reference to the article under the above heading in your issue of 17th July, we venture to submit that there is a simpler method than that suggested in the article of avoiding the danger to mortgagees revealed by the decision of the Court of Appeal in *Piskor's* case, and that a combined mortgage and conveyance would be unnecessarily complicated and lengthy, and would tend to increase the danger of those mistakes and omissions which it is so difficult to avoid in the preparation of documents of such novelty and length. The deed suggested in the article would entail the adoption of new lengthy forms, and the scrapping of old familiar forms, and particularly those used by the different building societies. Moreover, question might be raised as to the proper charges to be made in connection with a conveyance and mortgage carried out in the manner suggested in the article; and difficulties might arise in transactions where separate solicitors represent the mortgagee and the purchaser respectively. Which of them would prepare the suggested combined deed? Presumably each would have the right to prepare a part of it; but which would submit it to the vendor's solicitor for approval, and which of them would engross it? The solution of these conundrums might not be easy, especially if the solicitors concerned were not disposed to co-operate with one another—but that is a possibility which perhaps we should not venture even to suggest!

In our opinion, it would be better to keep, as far as possible, to precedents with which one is familiar and which are well tried. It may be that there are advantages in a combined form which have escaped our notice; but keeping in mind the points to be covered if the dangers appearing from *Piskor's* case are to be avoided, namely:—

(1) the vesting of a legal estate in the mortgagee before any assurance of a legal estate in the mortgaged property to the purchaser,

(2) the absolute bar against the creation of any form of tenancy of the mortgaged premises by the purchaser,

(3) the release of the vendor from all liability under the mortgage given by him immediately the property becomes vested in the purchaser subject to the mortgage, and the substitution therefor of liability on the part of the purchaser,

(4) the payment by the purchaser of the additional expense occasioned to the vendor by reason of his entering into the mortgage,

it is suggested that, bearing these points in mind, a simpler and equally effective method of dealing with the position would be as follows.

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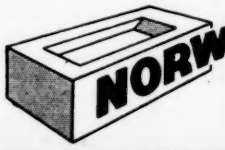

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The assurance of the property to the purchaser would recite, or could be made supplemental to the mortgage " bearing even date with but executed immediately prior to this deed," thus showing that a legal estate or charge was already vested in the mortgagee, and would follow the usual form of an assurance of property subject to a legal mortgage or charge. There would be no necessity for the mortgagee to join in to release the vendor from liability under the mortgage, nor for any covenant by the purchaser for indemnity against such liability, or any new covenants by the purchaser with the mortgagees.

It will be seen that, by adopting our suggestions, very little departure from the normal conveyancing practice in such matters is necessary, and that forms with which one has grown familiar can be used, with the addition only of a proviso on the lines indicated above at the end of the mortgage.

With regard to the concluding paragraph of the article, although it may be that a purchaser can dictate the form of his own conveyance, we doubt whether an uncoöperative vendor could be compelled to enter into a mortgage for the convenience of his purchaser in the absence of an express condition in the contract. We suggest that the position would be met, and sales, particularly sales by auction, and mortgages by purchasers, would be facilitated if contracts contained a condition to the effect that should the purchaser require a loan on first mortgage of the property to enable him to complete his purchase thereof, then, if the purchaser so desired, and of such desire gave to the vendor's solicitors notice in writing not more than, say, seven days after the contract, the vendor would, at the purchaser's expense, enter into a legal mortgage or charge of the property to secure such amount as the purchaser could obtain on loan, such mortgage to be approved by the vendor's solicitors, and to contain such covenants and provisions, including covenants by the purchaser as surety, as the mortgagee's solicitors should require, and also such provisions for the protection of the vendor, including his discharge from liability under the mortgage, as his solicitors should require, the vendor's solicitors' costs in connection with the perusal, execution and completion of the mortgage, amounting to, say, £2 2s., to be paid by the purchaser to the vendor's solicitors at the same time as the submission to them of the draft mortgage for perusal. It will be appreciated that the matter might go off through no fault of the vendor—as matters only too frequently do these days!—and that the vendor might incur costs in connection with the proposed mortgage which, unless they are paid before the work is entered upon, it would probably be difficult for him to recover. It is thought that any purchaser requiring a building society mortgage, who could produce to the society a contract containing a condition on the lines indicated above, would be able to satisfy the society that there was little danger of their having a tenanted property foisted upon them as security for an advance.

Blackpool. ASCROFT, WHITESIDE & CO.

" A B C " writes :—

This is another helpful suggestion for a practical solution of the difficulties which now face mortgagees of house property as a result of *Piskor's* case. I think that perhaps the inconvenience or danger of using new forms in place of accustomed ones can be overstressed, but I agree that, especially in the case of building societies, any unnecessary departure from existing practice should be avoided if possible. This suggestion shows how this can be done.

Costs on Compulsory Acquisitions

Sir,—I have read with interest the article on this subject in your issue dated 24th July. It appears to me that the scale fee on an average sale does have regard to the circumstances which have to be taken into account in assessing a fee under Sched. II; and if this is so, then, on an average acquisition the Sched. II fee ought to be equal to the scale. If, however, the acquisition is not an average one (if, for example, the title is extraordinarily simple or complex), then the Sched. II fee ought to be less or more than the appropriate scale, as the occasion may require. It would be interesting to know the opinions of other solicitors on this point of view.

Crawley. RICHD. A. HOLLAND.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

PRIVY COUNCIL: JURISDICTION: ELECTION PETITION: CEYLON

Senanayake *v.* Navaratne and Another

Viscount Simonds, L.C., Lord Cohen, Mr. L. M. D. de Silva

21st June, 1954

Appeal from the Supreme Court of Ceylon, affirming by a majority an order of the election judge.

By ss. 81 and 82 of the Ceylon (Parliamentary Elections) Order in Council, 1946, the determination by an election judge of matters arising on an election petition was final. The Parliamentary Elections (Amendment) Act, No. 19 of 1948, repealed these sections and substituted new sections which provided for an appeal to the Supreme Court on a question of law, the decision of that court to be final and conclusive. The election judge found that the appellant's election to the House of Representatives, Ceylon, as member for the Kandy electoral district, was void on the ground that he had committed two corrupt practices. The Supreme Court reversed his decision on one of them, but affirmed his determination that the election was void on the ground that the appellant, in breach of para. (*f*) of s. 58 of the Order in Council of 1946, had knowingly made the declaration as to election expenses required by s. 70 of the Order in Council falsely. Before the Supreme Court the appellant argued that the determination of the election judge ought to be reversed on two grounds: (1) that there was not evidence to support the finding of the election judge; (2) that he had no jurisdiction to hear the petition, since, although the petition had been presented in accordance with s. 83 (1) of the Order in Council, the application for leave to amend the petition by alleging a false declaration as to election expenses had not been made within twenty-one days of the date on which the result of the election had been published in the Government Gazette in accordance with s. 50. The Supreme Court rejected both pleas. The appellant applied to the Judicial Committee for leave to appeal from the decision.

VISCOUNT SIMONDS, L.C., giving the judgment of the Board, said that their lordships were satisfied that the election judge as established by the Order in Council of 1946 was a tribunal with a jurisdiction, not only to determine finally the question whether the corrupt practices alleged in the petition had been committed, but also to determine finally whether, upon the true construction of the Order in Council, it was competent in the circumstances for the petitioner to maintain his amended petition. In their lordships' opinion, the peculiar nature of the jurisdiction and the importance in the public interest of securing at an early date a final determination of the matter and the representation in Parliament of the constituency affected made it clear that it was not the intention of the Order in Council to create a tribunal with the ordinary incident of an appeal to the Crown. It was for these

reasons that their lordships had humbly tendered their advice to Her Majesty that the appeal ought not to be further entertained.

APPEARANCES: *Sir Hartley Shawcross*, Q.C.; *Kenneth Diplock*, Q.C., and *R. K. Handoo* (*De Silva & Mendis*); *S. Nadesan*, Q.C., *S. Amerasinghe* and *P. B. Tampoe* (*Smiles & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 336

COMPULSORY ACQUISITION OF LAND: DURING PRICE CONTROL: DETERMINATION OF COMPENSATION

Minister for Public Works *v.* Thistlethwayte and Another

Lord Porter, Lord Oaksey, Lord Reid, Lord Tucker and Lord Asquith of Bishopstone. 22nd July, 1954

This was an appeal from a judgment of the Full Court of the Supreme Court of New South Wales, upon a case stated by Sugerman, J. (the judge of the Land and Valuation Court). By a judgment of 20th March, 1953, Sugerman, J., had determined the amount of compensation for the compulsory resumption for public purposes, at a time when the price at which land might be sold and purchased was temporarily controlled pursuant to the Commonwealth National Security (Economic Organization) Regulations, of certain lands owned by the respondents in proceedings brought by them against the appellant Minister under the Public Works Act, 1912, of New South Wales. Sugerman, J., had considered himself bound by the decision of the High Court of Australia in *The Commonwealth* v. *Arklay* (1952), 87 C.L.R. 159, in which it was held that " in estimating the value of land to an owner dispossessed during controls, the valuer should estimate the price which a vendor willing but not anxious to sell would agree to, if he were allowed, and a willing purchaser would give to obtain the land, although in his turn he would be subject to the controls in reselling." The Supreme Court of New South Wales considered the present case indistinguishable from *Arklay's* case, *supra*, and that they were bound by it; and they answered the questions in the case stated accordingly. The Minister appealed.

LORD TUCKER, giving the judgment, said that the date of resumption was the relevant date for the purposes of compensation, and the proper measure of the compensation to which the respondents were entitled—and it was the value of the land to the owner which had to be ascertained—was not the price which the Treasurer would have approved under the price control regulations on a sale of the land on the date of resumption, but the price which a vendor willing but not anxious to sell would agree to, if he were allowed, and a willing purchaser would give to obtain the land, although in his turn he would be subject to the control of land sales in reselling. Whatever formula was adopted, it must be one which gave effect in such cases as the present to the element of value to the owner in being deprived of his right to retain his property with a view to sale in the future at a date which might reasonably be expected to be not far distant at a price which would almost certainly exceed the present controlled price. *Arklay's* case applied to the present case, and the presence in that case of the constitutional element —that s. 51 (xxxi) of the constitution required that legislation for the acquisition of property should afford just terms—was not sufficient to distinguish it from the present case. Further, in assessing the compensation, evidence was in the circumstances admissible (*a*) of prices obtained on sales effected, after the termination of land sales control, of individual residential lots situated in the neighbourhood of the subject land and comparable to those into which it would be sub-divided; (*b*) of the estimated cost shortly after the termination of control of road construction and drainage and other works necessary for the development of the subject land in sub-division; and (*c*) of the opinions of expert valuers founded upon, *inter alia*, the materials mentioned in (*a*) and (*b*), as to what price the subject land might be expected to have realised if sold *in globo* shortly after the termination of control. Their lordships would humbly advise Her Majesty that the appeal of the Minister should be dismissed. The appellant must pay the respondents' costs of the appeal.

APPEARANCES: *J. D. Holmes*, Q.C., and *R. Else-Mitchell* (both of Australia) (*Light & Fulton*); *M. F. Hardie*, Q.C. (Australia), and *J. G. Le Quesne* (*Birkbeck, Julius, Coburn & Broad*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [3 W.L.R. 305

COURT OF APPEAL

METROPOLIS: FIRE PRECAUTIONS: WHETHER MORTGAGEES' RECEIVER AN "OWNER": RIGHT OF PERSON INJURED TO SUE

Solomons *v.* R. Gertzenstein, Ltd., and Others

Somervell, Birkett and Romer, L.JJ. 30th June, 1954

Appeal from Lord Goddard, C.J. ([1954] 1 Q.B. 565; *ante*, p. 270).

Section 133 (2) of the London Building Acts (Amendment) Act, 1939 (in Pt. XII of the Act), provides that " All means of escape in case of fire . . . provided in pursuance of . . . this Act or otherwise shall be kept and maintained in good condition and repair and in efficient working order by the owner of the building." Section 33 defines "owner", for the purposes of Pt. V of the Act (provision of means of escape in case of fire), as " the person for the time being receiving the rack-rent of the premises whether on his own account or as agent or trustee . . . " By s. 148, contravention of, or failure to comply with, the provisions of s. 133 is an offence for which a penalty is imposed. The London Building Act, 1930, which has to be read and construed as one with the Act of 1939, by s. 5, defines " owner " as including " every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement or in occupation of the land or tenement otherwise than as a tenant from year to year or for any less term, or as a tenant at will." A house in Soho was sub-let to a number of tenants who carried on a variety of occupations, including manufacturing processes, on the premises, but control of the staircases and passages was retained by the landlords. The rents were collected and the property to a certain extent managed by a receiver who had been appointed in September, 1949, by a building society to whom the landlords had mortgaged their interest. In 1925 the London County Council had required the owners of the building to comply with s. 12 of the London Building Act, 1905, which required that a trap-door with a fixed or hinged ladder or other means of access to the roof be provided. In fact the building had a trap-door leading to the roof and an adequate ladder with hooks was provided, but it was seldom in position and was lying in a passage when, at about 7 p.m. on 10th November, 1950, a fire started accidentally by a short circuit in the well of the staircase, which caused to smoulder a stack of packing paper and cardboard cartons placed on a half-landing by the first defendants, tenants occupying rooms on the first floor where they carried on a fur manufacturing business. A sheet of flame suddenly flared up the staircase well and the plaintiff, an employee of a tenant of a second-floor room, who had gone to the top floor in search of water, received injuries while escaping through a window. In an action for damages for personal injuries the plaintiff alleged, *inter alia*, a breach of statutory duty under s. 133 of the Act of 1939 by the landlords, and also by the receiver as the " person in receipt " of the rack-rent as " agent," in failing to keep and maintain the means of escape in efficient working order. Lord Goddard, C.J., gave judgment for the plaintiff, against the receiver and landlords, holding that the receiver was liable as " owner " under s. 133, and that the plaintiff had a personal right to sue for breach of statutory duty. The receiver appealed.

BIRKETT, L.J., said that for the purposes of Pt. V of the Act the receiver was the " owner " and must fulfil the obligations imposed by that Part; but he was being charged with a breach of statutory duty imposed by s. 133 (2), which was in Pt. XII. The question was, whether the definition of " owner " in s. 33 of Pt. V applied to s. 133 (2) in Pt. XII. It was shown not to be so by s. 141 (3), which provided: " In this section the expression 'owner' in relation to any requirement in virtue of any of the provisions of Pt. V . . . has the same meaning as in that Part of this Act," indicating that " owner " in s. 133 (2) was not intended to have the same meaning as in s. 33, so that the definition must be found elsewhere, and reference had to be made to s. 5 of the Act of 1930, which contained a definition of " owner " which did not contain the words " or as agent or trustee for any other person." The effect was to release the receiver from the statutory duty of maintaining the means of escape from fire, so that the action must fail against him. Further, no breach of s. 133 (2) had been satisfactorily established on the evidence; it had not been proved that the ladder was not in good order and repair. On the last question, whether a breach of the statutory duty alleged gave a personal right to sue for damages, the duty imposed was for the benefit of a particular ascertainable

class, namely, the persons in the house, and those persons had a right of action for a breach, notwithstanding that penalties were also provided. The appeal should be allowed.

ROMER, L.J., agreed.

SOMERVELL, L.J., dissented on the issue as to the existence of a personal right of action. Appeal allowed.

APPEARANCES: *R. M. Everett*, Q.C., and *H. Lester* (*Spiro and Steele*); *Viscount Hailsham*, Q.C., and *J. Perrett* (*Herbert Baron and Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 317

ADMINISTRATION OF ESTATE: LIABILITY OF SURETIES UNDER ADMINISTRATION BOND: DATE OF TERMINATION OF ADMINISTRATION

Harvell *v.* Foster and Another

Evershed, M.R., Jenkins and Hodson, L.JJ. 16th July, 1954

Appeal from Lord Goddard, C.J. ([1954] 2 W.L.R. 642; *ante*, p. 233).

A testator gave all his estate to his daughter, the plaintiff, Anne Elizabeth Harvell, and appointed her his sole executrix. He died in 1948, when the plaintiff was under twenty-one years of age. On the advice of the defendants, who were her solicitors, administration with the will annexed was granted under s. 165 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, to the plaintiff's husband during her minority. The husband and the two defendants as sureties gave to the Principal Probate Registrar a joint and several administration bond that the husband would the estate "well and truly administer according to law" and, further, that he would "make or cause to be made a just and true account of the administration of the said estate." The defendants acted for the husband in the administration and got in and realised the testator's estate, paid his debts and funeral and testamentary expenses and paid the balance, which exceeded £950, to the husband. Subsequently, the husband quarrelled with the plaintiff, paid her £300 and turned her out of the matrimonial home. He then disappeared and never had accounted for the balance of the estate. The plaintiff attained twenty-one in 1950 and, the bond having been assigned to her, she claimed against the defendants as sureties under the bond. Lord Goddard, C.J., dismissed the action, holding that once the residue was in the husband's hands his character changed from that of administrator to that of trustee and, thereupon, the defendants' obligations under the bond ceased. The plaintiff appealed.

EVERSHED, M.R., delivering the judgment of the court, said that upon the true construction of the bond the husband had not "well and truly administered the estate according to law" and that the defendants' liability persisted at least up to the end of the period of the grant, that was, until the plaintiff attained the age of twenty-one years. That was the construction adopted in *Archbishop of Canterbury* v. *Robertson* (1833), 1 Cr. & M. 690, where almost identical words were used. The proposition in *In re Ponder* [1921] 2 Ch. 59 by Sargant, J., as to when an administrator becomes *functus officio* was too widely stated. A personal representative, who has cleared the estate and become a trustee of the net residue for the persons beneficially interested, does not necessarily, and automatically, become discharged from his obligations as personal representative and in particular from the obligation of any bond which he may have entered into for the due administration of the estate. The duty of an administrator, as such, must at least extend to paying the funeral and testamentary expenses and debts and legacies, if any, and, where immediate distribution is impossible owing to the infancy of the person beneficially entitled, to retaining the net residue in trust for the infant. Until the administrator could show that he had done that, he could not be said to have duly administered the estate according to law. The provisions of s. 42 of the Administration of Estates Act, 1925, carried the necessary implication that until a personal representative, having in his hands assets to which an infant was absolutely entitled, either availed himself of the power thereby conferred to appoint a trust corporation or two or more individuals as trustees for the infant and upon such appointment vested the assets in such trustees, or accounted for or paid them over to the infant on his attaining the age of twenty-one years, the administrator remained liable for them in his character of personal representative. The defendants, as sureties, could not assert that the husband's obligations as administrator, and consequently their own liability under the bond, ceased automatically on his receiving the net residue. Appeal allowed.

APPEARANCES: *Christie*, Q.C., and *C. E. Rochford* (*Bailey, Breeze & Wyles*); *Pascoe Hayward*, Q.C., and *John Monckton* (*White & Leonard*, for *Chanter, Burrington & Foster*, Barnstaple).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [3 W.L.R. 351

CHANCERY DIVISION

LANDLORD AND TENANT: REPAIRING COVENANT: MUTUAL MISTAKE AS TO EFFECT: WHETHER PURCHASER AFFECTED BY EQUITY TO RECTIFY

Smith *v.* Jones

Upjohn, J. 23rd February, 1954

Action.

In 1946 a number of farms, part of an agricultural estate, were sold at auction. One of the farms was purchased by the defendant. He had knowledge that the farm was in the occupation of a tenant (the plaintiff); before the sale he had inspected a copy of the plaintiff's tenancy agreement at the office of the auctioneers and formed the opinion that under the terms of the repairing covenant the responsibility for doing repairs to the farmhouse and buildings was on the tenant. For many years the estate management had used a standard printed form of tenancy agreement, and it had always been their belief and the belief of the tenants that under the repairing covenant the estate was responsible for repairs to buildings; they and the tenants had always acted accordingly, and the plaintiff, when he signed his agreement in 1939, was told that that was its effect. After the purchase of the farm by the defendant disputes arose between the plaintiff and the defendant, as each required repairs to be done while refusing to do them himself. Eventually, a case was stated for the opinion of a county court judge, under regulations made pursuant to the provisions of the Agricultural Holdings Act, 1948, which raised, *inter alia*, the question of the proper construction of the repairing covenant. The judge held that the plaintiff was liable for structural repairs, but suggested that there might be a case for rectification and stayed all proceedings until that question was decided. The plaintiff therefore brought an action claiming that his tenancy agreement should be rectified in such a way as to make the defendant liable for structural repairs; at the hearing he did not seek to controvert the county court judge's construction of the repairing covenant. The defendant contended that, on the facts, there was no case for rectification; this contention was upheld by Upjohn, J. The defendant further contended that, if a case for rectification could be established against the original lessors he, as a bona fide purchaser for value without notice, was not bound by the plaintiff's equity to rectify.

UPJOHN, J., said that the law as to notice of an occupying tenant's rights to a purchaser had been compendiously stated in *Barnhart* v. *Greenshields* (1853), 9 Moore P.C. 18. But no case had been cited which went so far as to say that an equity for rectification was enforceable against a purchaser. The case cited had been followed in the Court of Appeal in *Hunt* v. *Luck* [1902] 1 Ch. 428, in which it was pointed out that the real question was the construction of the Conveyancing Act, 1882 (now s. 199 (1) of the Law of Property Act, 1925), which provides that: "A purchaser shall not be prejudicially affected by notice of . . . (ii) Any other instrument or matter or fact or thing unless—(*a*) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him." So that the question was, what inquiries the defendant should have made. He should have asked for the tenancy agreement and satisfied himself that it was correct in form. He was not required to satisfy himself whether the written agreement correctly represented the respective rights of the tenant and the vendor landlords. The purchaser was entitled and bound to rely on the terms of the document, which spoke for itself. Accordingly, the defendant was entitled to rely on his plea of bona fide purchaser for value without notice. Judgment for the defendant.

APPEARANCES: *J. L. Arnold* (*Crawley, Arnold, Ellis & Ellis*, for *Horwood & James*, Aylesbury); *L. A. Blundell* (*Paisner & Co.*, for *C. R. Thomas & Son*, Maidenhead).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1089

CHARITY: PRACTICABILITY OF CHARITABLE BEQUEST: FORM OF INQUIRY

***In re* White's Will Trusts; Barrow and Another *v.* Gillard and Another**

Upjohn, J. 24th June, 1954

Adjourned summons.

A testatrix by her will provided: "The two cottages, Kidbrook and Gretna, to be used as missionary homes—Mr. *B* . . . also Mr. *S* . . . they both know my wish how they are to be used rest homes for retired aged missionaries." The cottages, Kidbrook and Gretna, were, at the date of this summons, occupied by tenants entitled to the protection of the Rent Restriction Acts and there was no indication that any of them proposed, or would become liable, to leave. *B* and *S* were secretaries of charitable societies. The first society wished Kidbrook to be sold, and the proceeds of sale transferred to them. The second society wished Gretna to be conveyed to them, so that they could use it as a missionary home when vacant possession could be obtained. The trustees took out a summons asking (1) whether the gifts were charitable; (2) if so, to what extent they were practicable, and whether they failed to any extent and ought to be administered *cy-près*, and (3) for a scheme of administration, if necessary.

UPJOHN, J., said that the gifts were charitable, but there was no general charitable intent, so that if the purpose was impracticable they fell into residue. Accordingly, the residuary legatee was entitled to an inquiry as the practicability of carrying out the testatrix's intention. The form of inquiry adopted in *In re James* [1932] 2 Ch. 25 and *In re Wright* [1954] 2 W.L.R. 972; *ante*, p. 336, namely: "to inquire whether it is or will be at any future time practicable to establish a home such as this," was not satisfactory. Where a particular purpose was indicated in a will, it could not be right to extend an inquiry into the possibility of carrying it out to an indefinite time in the future. A more satisfactory formula, which had been suggested and agreed was: "whether at the date of the death of the testatrix it was practicable to carry the intentions of the testatrix into effect or whether at the said date there was any reasonable prospect that it would be practicable to do so at some future time." If there was no such reasonable prospect, the residuary legatee would be entitled to the cottages. An inquiry in that form would be directed. Order accordingly.

APPEARANCES: *C. D. Myles; R. S. Lazarus* (*T. A. C. Burgess* with him) (*Peacock & Goddard*, for *Mooring Aldridge & Haydon*, Christchurch); *D. B. Buckley* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 314

PRACTICE: PAYMENT INTO COURT OF SINGLE SUM IN RESPECT OF ALL CAUSES OF ACTION

Robertson *v.* Aberdeen Journals, Ltd., and Others

Upjohn, J. 14th July, 1954

Procedure summons.

The plaintiff brought an action against the proprietors of a local newspaper, a journalist and his local Member of Parliament. He alleged that all three defendants had infringed the copyright in a memorandum which he had compiled and were guilty of a breach of confidence in being concerned with its publication, and that the first two defendants were liable in conversion under s. 7 of the Copyright Act, 1911. The defendants applied for leave that they, or alternatively each of them, should either jointly or severally pay into court a single sum in respect of all the causes of action.

UPJOHN, J., considered the effect of Ord. 22, rr. 1 (1), (2) and 4 (1), and Ord. 71, r. 2, and said that the rules permitted a payment in by all the defendants who were sued jointly, severally or in the alternative. *Prima facie*, separate payments ought to be made, and it was only in proper cases that the court ought to direct otherwise. In the present case, damages for breach of copyright might well be very different from damages for breach of confidence. The two causes of action were distinct and might give rise to different *quanta* of damage, but they were inseparably bound up together, and there was no injustice to the plaintiff in ordering one payment in to cover both, whereas there might be prejudice to the defendants if they were ordered to pay in separately. The plaintiff knew whether he wanted the document kept secret, in which case the damages for breach of confidence would be substantial and those for breach of copyright small, or whether he wanted to publish it, in which case the *quanta* of damages would be reversed. The plaintiff knew which was his main claim; the defendants did not, and there would be grave hardship on them if payment in of separate sums in respect of each cause of action were ordered. The application would accordingly be granted. Order accordingly.

APPEARANCES: *F. E. Skone James* (*Theodore Goddard & Co.*); *T. G. Roche* (*Malcolm Slowe & Co.*); *K. E. Shelley*, Q.C., and *D. Falconer* (*Farrer & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1084

QUEEN'S BENCH DIVISION

NATIONAL INSURANCE: EXPENSES IN EXCESS OF REMUNERATION: "GAINFULLY OCCUPIED"

Vandyk *v.* Minister of Pensions and National Insurance

Slade, J. 16th July, 1954

Case stated by the Minister.

The National Insurance Act, 1946, provides by s. 1: "(2) For the purposes of this Act, insured persons shall be divided into the following three classes:—(*a*) employed persons, that is to say persons gainfully occupied in employment in Great Britain, being employed under a contract of service; (*b*) self-employed persons, that is to say persons gainfully occupied in employment in Great Britain who are not employed persons; (*c*) non-employed persons, that is to say persons who are not employed or self-employed persons." The appellant was incapacitated by paralysis of the lower limbs and left arm after having contracted poliomyelitis. Having been advised by his doctors to pursue a purposeful occupation to aid his recovery, he took up an appointment at a salary of £300 a year plus £75 a year travelling allowance on account of his incapacity. A driver-attendant and a motor-car which he used to convey him to and from his work cost him some £11 a week. At an inquiry directed by the Minister to ascertain the circumstances of the appellant's employment, the appellant contended that as he made no profit out of his employment he was a "non-employed person" within the meaning of the subsection. After the inquiry, the Minister found the facts as set out above, and held that the appellant, while working as a research assistant, was "gainfully occupied" and was working under a contract of service. A case was stated for the opinion of the court.

SLADE, J., said that the Minister's contention was that "gainfully occupied" did not require that the employment should result in a profit; it sufficed that the contract of employment provided emoluments for the servant. The appellant contended that "gainfully occupied" must imply the striking of a balance; if expenses fell short of receipts, the appellant was an "employed person"; if otherwise, he was a "non-employed person." The regulations, in so far as they were admissible to construe the Act, tended to support the construction that gainful occupation was quite independent of commercial profit. The appellant's construction raised the difficulty (1) that the position might fluctuate from day to day, according to the balance between receipts and expenses, and (2) that there must be some means of assessing what was proper expenditure. In category (*b*), which concerned self-employed persons, there could be no contract of service; in category (*a*), where the words must have the same meaning, they indicated a person who received something by way of remuneration for his services under a contract of employment, in contradistinction to service in an honorary or unpaid capacity. Certain authorities, the *Arthur Average Association* case (1875), L.R. 10 Ch. 542; the *Padstow Assurance* case (1882), 20 Ch. D. 137, and *Greenberg* v. *Cooperstein* [1926] Ch. 657, had been of some assistance; they indicated that gain was not necessarily commercial profit. Appeal dismissed.

APPEARANCES: *Neil Lawson* (*Herbert Oppenheimer, Nathan and Vandyk*); *J. P. Ashworth* (*Solicitor, Ministry of National Insurance*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 342

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: JUSTICES: CONSTITUTION OF COURT: ADJOURNED HEARINGS

Munday *v.* Munday

Lord Merriman, P., and Davies, J. 25th June, 1954

Appeal by a husband against an order of the Petersfield justices, dated 3rd March, 1954.

In October, 1950, the justices made an order against the husband for £2 a week for the wife and 10s. a week for each of

the two children (one of whom had reached the age of sixteen before the date of the order now appealed) on the ground of desertion. An application by the husband in 1951 to reduce the amount of the order was rejected. On another occasion the husband was sent to prison for five days for non-payment of arrears, and a suspended committal order was made against him in July, 1953. A further application to vary the order was made in 1954, his case being that he was unable to maintain the payments under the order. The application in 1954 was first heard on 3rd February by three justices. The husband gave evidence-in-chief and was cross-examined. An adjournment was ordered for the purpose of the production of certain books and documents, and the case came on again on 17th February, 1954. At that hearing there were present the three previous justices and two additional justices. Further evidence was given by the husband at that hearing and the wife also gave evidence, which was interposed, concerning her earnings. No objection was taken to the change in the composition of the court nor to the interposition of the wife's evidence. A further adjournment was ordered so that the wife's solicitors might examine the books and documents produced, and the case came on for a final hearing on 3rd March, 1954. At this hearing the two justices who had been added to the court on 17th February and one who had not attended either of the previous hearings were present. The three justices who had heard the husband's evidence-in-chief and cross-examination on the first occasion, and the evidence on the second occasion, were absent. It was alleged on behalf of the husband and as a ground of appeal that: "The provisions of s. 98 (6) of the Magistrates' Courts Act, 1952, were not complied with in that the justices composing the court were not present during the whole of the proceedings."

LORD MERRIMAN, P., said that it was right to point out that owing to the definition of "domestic proceedings" in s. 56 of the Magistrates' Courts Act, 1952, an application to vary such an order did not come within the definition and that there was nothing vitally wrong in the fact that five justices had been sitting. But although there had been a quorum on the last occasion, it was impossible by any process of reasoning to say that the justices composing the court had been present throughout the proceedings. Apart from the fact that s. 98 of the Act of 1952 was mandatory, and contained no dispensing power remotely relevant to the proceedings, this was pre-eminently a case in which the principle that justice must not merely be done but must manifestly be seen to be done had been infringed. There must be a rehearing of the application before an entirely fresh panel of justices, and a deputy clerk appointed.

DAVIES, J., concurred. Rehearing ordered.

APPEARANCES: *Basil Garland* (*Charles Russell & Co.*, for *Johnson & Clarence*, Midhurst); *N. R. Blaker* (*Gibson & Weldon*, for *Burley & Geach*, Petersfield).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 1078**

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 30th July:—

Appropriation
Baking Industry (Hours of Work)
Beit Trust
Birkenhead Corporation
Birmingham Corporation
Bradford Corporation (Trolley Vehicles) Order Confirmation
Brighton Corporation
British Transport Commission
British Transport Commission Order Confirmation
Charitable Trusts (Validation)
Coventry Corporation
Derbyshire County Council
Finance
Gas and Electricity (Borrowing Powers)
Hartlepool Port and Harbour
Hire-Purchase
Housing Repairs and Rents
Housing (Repairs and Rents) (Scotland)
Isle of Man (Customs)
Landlord and Tenant
London County Council (Holland House) Amendment
Long Leases (Scotland)
Manchester Corporation
Marriage Act, 1949 (Amendment)
Mersey Docks and Harbour Board
Newport Corporation
Orpington Urban District Council
Pier and Harbour Order (Brighton) Confirmation
Pier and Harbour Order (Cowes) Confirmation
Pier and Harbour Order (Llanelly) Confirmation
Pier and Harbour Order (Newport (Isle of Wight)) Confirmation
Pier and Harbour Order (Salcombe) Confirmation
Pier and Harbour Order (Whitehaven) Confirmation
Post Office (Site and Railway)
Protection of Animals (Anæsthetics)
Royal Warehousemen Clerks and Drapers' Schools
Slaughter of Animals (Amendment)
Stroudwater Navigation
Summary Jurisdiction (Scotland)
Tees Conservancy (Deposit of Dredged Material)
Television
Walsall Corporation
Wesleyan and General Assurance Society
Wolverhampton Corporation (Trolley Vehicles) Order Confirmation

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time:—

Electricity Reorganisation (Scotland) Bill [H.C.] [29th July.

Transport Charges, &c. (Miscellaneous Provisions) Bill [H.C.] [26th July.

Read Third Time:—

Civil Defence (Armed Forces) Bill [H.L.] [26th July.

HOUSE OF COMMONS

QUESTIONS

IRISH COMPANIES (REAL ESTATE OWNERSHIP)

The ATTORNEY-GENERAL said he was studying the implication of a recent decision by the Court of Appeal that companies registered in Eire could not own real estate in Great Britain without a licence from the Crown.

Asked whether he would make it clear that occupiers of houses in Brixton owned by "Mr. Brady" were no longer liable for any payment to these Irish companies, the Attorney-General said he would prefer to wait until he had made a full study of the matter. [26th July.

LOCAL AUTHORITIES (HOUSE PURCHASE LOANS)

Mr. HAROLD MACMILLAN said that 382 local authorities had agreed to help would-be purchasers who could not find the deposit ordinarily required by a building society by adopting the two guarantee schemes explained in the appendices to circular 42/54. Thirty-seven had said they would not operate the scheme, but they had been asked to reconsider their decision. [26th July.

AGRICULTURAL LAND TRIBUNALS (APPOINTMENTS)

Mr. NUGENT said that in view of the recent decision in *Woollett* v. *Ministry of Agriculture and Fisheries* instructions had been given to the officers concerned to ensure that there were no grounds for doubt about the validity of the appointments of members of the Lands Tribunal. The question of an appeal from the decision was under consideration. [26th July.

AGRICULTURAL LAND TRIBUNALS (SEPARATE HEARINGS)

Asked what steps he would take to ensure that all appeals to agricultural land tribunals should be considered separately if the appellants so desired, Mr. NUGENT said that the Agriculture (Procedure of Agricultural Land Tribunals) Order, 1948, gave discretion to the chairman of a tribunal to deal at one hearing with references by two or more persons in relation to a single

proposal or decision of the Minister. Chairmen were experienced lawyers appointed by the Lord Chancellor, and he did not think it would be desirable to interfere with their discretion in this matter. The case of *Woollett v. Minister of Agriculture and Fisheries* was in no way concerned with the procedure of county agricultural executive committees. [26th July.

Requisitioned Properties

Asked whether he would send a circular to local authorities suggesting that they warn persons proposing to acquire requisitioned property to ascertain the probable date of derequisitioning before signing a contract for purchase, Mr. Harold Macmillan said he thought it was usual for any prospective purchaser or his solicitor to approach the local authority for information about the house before committing himself. [27th July.

Small Trusts (Rural Parishes)

Mr. Vane asked for an assurance that the many small trusts founded for the betterment and education of children in rural parishes would be protected and the trustees encouraged, where necessary, to find new ways of carrying out the intentions of their founders, rather than that the funds should be controlled centrally or merged into county funds. The Minister of Education said that she could not give an assurance that she would not in any circumstances make use of the powers given her under s. 2 of the Education (Miscellaneous Provisions) Act, 1948, but it was her policy to help the trustees of individual educational charities to play a useful role wherever possible. [29th July.

Houses (Estate Duty Valuation)

Miss Ward asked on what date, in the valuation of houses for the payment of estate duty on small estates, the term " vacant possession " and the concession made in 1944 in relation to the valuation of certain houses became the identical basis of calculation. Would the directive to district valuers be placed in the library ?

Mr. Maudling said that the statutory and concessional values for estate duty purposes of owner-occupied houses within the scope of the concession had now tended to coincide in some cases but not in all, and not as from any common date. No directive had been issued to district valuers in this connection. The assessment of the concessional figure was essentially a question of valuation and depended on the circumstances of each individual case. [29th July.

New Criminal Courts, South Lancashire

The Home Secretary said that, after some local consultation, he and the Lord Chancellor had it in mind to proceed with the proposals of the Departmental Committee on a Central Criminal Court in South Lancashire, but in a slightly modified form. They contemplated that there should be established in Liverpool a new court which would combine the functions of Liverpool Assizes, so far as criminal business was concerned, and of the Liverpool City Quarter Sessions, and that a similar court should be established in Manchester, combining the criminal work of the Manchester Assizes and the functions of the City Quarter Sessions.

Under these proposals the recorderships of Liverpool and Manchester would be full-time pensionable appointments. A permanent assize commission would be issued constituting all the Queen's Bench judges and the two recorders as members of the Liverpool court; and a permanent commission would be issued in respect of the Manchester court. Arrangements would be made whereby certain of the most serious cases would in practice be dealt with by a Queen's Bench judge. The ordinary assize commission, so far as South Lancashire was concerned, would then relate to civil work only.

The Liverpool City Justices would commit to the new Liverpool court all cases which they at present committed to Liverpool City Quarter Sessions or to the Liverpool Assizes, and also cases for sentence under ss. 28 and 29 of the Magistrates' Courts Act, 1952; the court would also hear appeals from the Liverpool City Justices. Similar provisions would be made in respect of Manchester.

Other justices in South Lancashire would commit to the Liverpool or to the Manchester court cases which at present they committed to the Liverpool or Manchester Assizes.

The Exchequer would make a contribution towards the cost of both courts. Legislation would be necessary and he could not at present say when it would be possible to introduce a Bill. [29th July.

Parking of Caravans (London)

The Home Secretary said that a few instances of caravans used for residential purposes being parked on grass verges and service roads in Outer London had come to the notice of the police, but the Commissioner of Police had no reason to think that the practice was increasing. Proceedings were being taken in some cases in which oral warnings had been disregarded. [29th July.

Motor Vehicles, London (Noise)

The Home Secretary said that in 1953 the Metropolitan Police dealt either by summons or by warning with 2,796 cases of infringement of the regulations relating to the emission of noise from motor vehicles, which included those which specifically required a silencer to be fitted. [29th July.

STATUTORY INSTRUMENTS

Ayr County Council (Muck Water) Water Order, 1954. (S.I. 1954 No. 980 (S. 98).) 5d.
Civil Aviation (Air Registration Board) (Amendment) Order, 1954. (S.I. 1954 No. 983.)
Coal Industry (Superannuation Scheme) (Winding Up, No. 7) Regulations, 1954. (S.I. 1954 No. 970.) 5d.
Ebbw Vale (Repeal of Local Enactments) Order, 1954. (S.I. 1954 No. 990.)
Import Duties (Exemptions) (No. 5) Order, 1954. (S.I. 1954 No. 969.)
Made-up Textiles Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1954. (S.I. 1954 No. 975.) 5d.
Marginal Agricultural Production (Scotland) Scheme, 1954. (S.I. 1954 No. 1010 (S. 100).)
Rag Flock and Other Filling Materials Regulations, 1954. (S.I. 1954 No. 985.)
Draft **St. James's and the Green Parks** Regulations, 1954. 5d.
Scarborough (Repeal of Local Enactment) Order, 1954. (S.I. 1954 No. 979.)
Staffordshire Potteries Water Board (Yarnfield) Order, 1954. (S.I. 1954 No. 984.)
Stopping up of Highways (Norfolk) (No. 2) Order, 1954. (S.I. 1954 No. 974.)
Stopping up of Highways (Warwickshire) (No. 3) Order, 1954. (S.I. 1954 No. 987.)
Superannuation (Civil Service and Imperial Institute) Transfer Rules, 1954. (S.I. 1954 No. 981.) 5d.
Sutherland County Council (Loch Meadie, Durness) Water Order, 1954. (S.I. 1954 No. 977 (S. 97).) 5d.
Draft **Teachers' Superannuation** (Accepted Schools) Amending Scheme, 1954.
Teachers' Superannuation (National Service) Amending Rules, 1954. (S.I. 1954 No. 965.)
Telegraph (Inland Written Telegram) Regulations, 1954. (S.I. 1954 No. 976.) 11d.
Ware Potatoes Order, 1954. (S.I. 1954 No. 986.) 11d.
Wool Textile Industry (Export Promotion Levy) (Amendment No. 2) Order, 1954. (S.I. 1954 No. 971.)
Wool Textile Industry (Scientific Research Levy) (Amendment No. 2) Order, 1954. (S.I. 1954 No. 972.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

SHARE OPTION SCHEMES

An Inland Revenue announcement states that the attention of the Board has been drawn to recent articles and comment in the Press in which it has been stated that liability to income tax in respect of the value of options granted to employees or directors under share option schemes is determined by reference to the date when the option was granted. This was for some time the official view of the law, but the Board are advised that, as a general rule, the liability to income tax should be determined by reference to the date on which the option was exercised, and not the date when it was granted. Particular option schemes may, of course, have special features which would affect the application of this general principle.

NOTES AND NEWS

Honours and Appointments

Mr. GEOFFREY NORDEN BELL has been appointed Solicitor to the Staffordshire Potteries Water Board.

Mr. CHARLES HUGH NAIRNE SCOTT, Assistant Deputy Coroner for South Buckinghamshire, has been appointed Deputy in succession to Mr. Edward Woodward, who has resigned. Mr. Woodward had held the position since 1947.

Miscellaneous

NOTICE—QUEEN'S BENCH DIVISION

SITTINGS OF MASTERS IN CHAMBERS

Starting on 1st October, 1954, the morning Chamber Lists of the Queen's Bench Masters will be timed for 10.30 a.m., 11 a.m. and 11.30 a.m.

SUMMONS FOR DIRECTIONS

Summons for Directions will be placed in the 11.30 a.m. Chamber List, but, where such summonses are expected to be long, special appointments should be asked for.

Attention is called to the fact that, pursuant to the new Ord. XXX, r. 1 (1), Summons for Directions will be returnable not less than twenty-one days after service. For this reason such summonses due for hearing after the Long Vacation may be issued from 1st September onwards.

NEW FORMS

A new form of Summons for Directions has been prescribed which must be used for all such summonses due for hearing on and after 1st October. New forms of Notice under the Summons for Directions, Order for Directions and of the various orders which may be made on an application for judgment under Ord. XIV have also been prescribed. These new forms are expected to be on sale by 1st September.

F. ARNOLD BAKER,
Senior Master.

27th July, 1954.

LAW REFORM COMMITTEE

The Lord Chancellor has invited the Law Reform Committee to consider (1) the rule against perpetuities; and (2) the effect on the liability of insurance companies of special conditions and exceptions in insurance policies and of non-disclosure of facts by persons effecting such policies.

Anyone wishing to make representations to the committee on either of these matters should communicate with the Secretary, Law Reform Committee, Lord Chancellor's Department, House of Lords, S.W.1.

WEST SUFFOLK DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County of West Suffolk. The plan, as approved, will be deposited in the Shire Hall, Bury St. Edmunds, for inspection by the public.

FORTHCOMING DISTRIBUTION OF ROUMANIAN ASSETS

The Administrator of Roumanian Property has now received directions from Her Majesty's Treasury to use the money realised by the sale of Roumanian property in the United Kingdom in making payments to persons and firms who possess certain qualifications and whose claims against the Roumanian Government or Roumanian nationals are established as of one of the types specified in the Treasury directions. Persons who wish to be supplied with a claim form to establish a claim under these directions should apply forthwith to the Administrator of Roumanian Property, Branch Y, Lacon House, Theobalds Road, W.C.1. A special notification dated 10th July has been circulated to persons who have already registered particulars of indebtedness due from Roumania under the facilities provided by the Board of Trade during and since the war, but if no such notification has yet been received by any person who has so registered, and he wishes to receive a claim form, he also should apply forthwith to the Administrator. A registration of indebtedness does not constitute a claim in the distribution, which must be made on a prescribed claim form. The Administrator will not be able to accept a claim form which is received after 31st January, 1955.

A SPECIAL SERVICE AT WESTMINSTER ABBEY FOR THE OPENING OF THE LAW COURTS

On Friday, 1st October, it being the first day of the Michaelmas law sittings, there will be a special service in Westminster Abbey at 11.45 a.m. Places will be reserved for Lords of Appeal, Judges, Official Referees, County Court Judges, Queen's Counsel, Officers of the Supreme Court and representative members of The Law Society. The Dean will receive the Lords of Appeal, Judges, Official Referees, County Court Judges and the representative members of The Law Society at the West Door. The service will be over at about 12.15 p.m.

Queen's Counsel, officers and other judicial and official persons will enter by the West Cloister Door via Dean's Yard, and cross to the North Aisle, where those taking part will assemble in their legal precedence, so as to follow next after the judges and law officers in the procession to the Choir. Members of the Junior Bar will enter by Jerusalem Chamber, Dean's Yard.

The Lord Chancellor's reception at the House of Lords will take place at 12.30 p.m.

Wills and Bequests

Mr. W. V. Reeve, solicitor, of the Strand, London, W.C.2, left £80,682.

Mr. F. L. Hale, retired solicitor, of Ealing, W.5, left £40,297 (£40,158 net).

Mr. E. B. Sharpley, solicitor, of Stoke-on-Trent, left £100,370 (£37,719 net). He left all his share and interest in his practice of a solicitor carried on at 20 Stafford Street, Hanley, including all office furniture, fittings, safes, deed boxes, law books, etc., to his managing clerk, Mr. William E. Buckley.

OBITUARY

GP. CAPT. C. M. M. GRECE

Group Captain Clair Mansell Maybury Grece, D.F.C., solicitor, of Redhill, Surrey, died recently, aged 39. He had been in command of the fighter station at Middle Wallop since 1952. He was admitted in 1938.

SOCIETIES

At the annual meeting of the HAMPSHIRE INCORPORATED LAW SOCIETY, held at Winchester on 14th July, 1954, the following officers were elected: president, Mr. R. C. Brooks (Basingstoke); vice-president, Mr. M. H. Pugh (Southampton); hon. secretary and treasurer, Mr. C. G. A. Paris (Southampton); and assistant hon. secretary, Mr. L. F. Parish (Southampton). The following members of the committee were re-elected: Messrs. A. R. Lightfoot (Southampton), P. Dungay (Aldershot) and R. S. L. Bowker (Winchester), with the addition of Mr. H. F. B. Clark (Southampton). After the meeting the members dined together at the Guildhall, Winchester, the principal guest being His Honour Judge Tylor, Q.C.

The LONDON SOLICITORS' GOLFING SOCIETY played Lloyd's Golf Club in a match by foursomes at Worplesdon on 23rd July, which the London solicitors won by 5–2 with one match halved.

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